

Senate File 178 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1037)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to a private cause of action for certain consumer
2 fraud violations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1307SV 83
5 rh/rj/14

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1 1 Section 1. NEW SECTION. 714H.1 TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Private Remedy for Consumer Fraud Act".
1 4 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.
1 5 1. "Advertisement" means the same as defined in section
1 6 714.16.
1 7 2. "Consumer" means a natural person or the person's legal
1 8 representative.
1 9 3. "Consumer merchandise" means merchandise offered for
1 10 sale or lease, or sold or leased, primarily for personal,
1 11 family, or household purposes.
1 12 4. "Deception" means the same as defined in section
1 13 714.16.
1 14 5. "Merchandise" means the same as defined in section
1 15 714.16 except that, for the purposes of this chapter,
1 16 "merchandise" does not include services offered or provided by
1 17 any of the following pursuant to a profession or business for
1 18 which they are licensed or registered:
1 19 a. Insurance companies subject to Title XIII.
1 20 b. Attorneys licensed to practice law in this state.
1 21 c. Financial institutions as defined in section 423.2,
1 22 subsection 6.
1 23 d. Public utilities as defined in section 476.1 that
1 24 furnish gas by a piped distribution system or electricity to
1 25 the public for compensation, when engaged in activities
1 26 subject to regulation by the utilities board pursuant to
1 27 chapter 476.
1 28 e. Persons or facilities licensed, certified, or
1 29 registered under chapter 135B, 135C, 135J, 148, 148A, 148B,
1 30 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B, 154C, 154D,
1 31 155A, 169, 522B, 542, 542B, 544A, or 544B.
1 32 6. "Person" means the same as defined in section 714.16.
1 33 7. "Sale" means any sale or offer for sale of consumer
1 34 merchandise for cash or credit.
1 35 8. "Unfair practice" means the same as defined in section
2 1 714.16.
2 2 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES AND
2 3 ACTS.
2 4 1. A person shall not engage in an unfair practice,
2 5 deception, fraud, false pretense, false promise, or
2 6 misrepresentation, or the concealment, suppression, or
2 7 omission of a material fact with the intent that others rely
2 8 upon the concealment, suppression, or omission, in connection
2 9 with the advertisement, sale, or lease of consumer
2 10 merchandise, or the solicitation of contributions for
2 11 charitable purposes. For the purposes of this chapter, any
2 12 claimant alleging fraud, false promise, false pretense, or
2 13 misrepresentation must prove that the prohibited practice
2 14 related to a material fact or facts.
2 15 2. A person shall not engage in any practice or act that
2 16 is in violation of any of the following:

2 17 a. Section 321.69.
2 18 b. Chapter 516D.
2 19 c. Section 516E.5, 516E.9, or 516E.10.
2 20 d. Chapter 555A.
2 21 e. Section 714.16, subsection 2, paragraphs "b" through
2 22 "n".
2 23 f. Chapter 714A.
2 24 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.
2 25 1. This chapter shall not apply to any of the following:
2 26 a. Advertising by a retailer for a product, other than a
2 27 drug or other product claiming to have a health-related
2 28 benefit or use, if the advertising is prepared by a supplier,
2 29 unless the retailer participated in the preparation of the
2 30 advertisement or knew or should have known that the
2 31 advertisement was deceptive, false, or misleading.
2 32 b. In connection with an advertisement that violates this
2 33 chapter, the newspaper, magazine, publication, or other print
2 34 media in which the advertisement appears, or the radio
2 35 station, television station, or other electronic media which
3 1 disseminates the advertisement if the newspaper, magazine,
3 2 publication, radio station, television station, or other print
3 3 or electronic media has no knowledge of the fraudulent intent,
3 4 design, or purpose of the advertiser at the time the
3 5 advertisement is accepted.
3 6 c. Any advertisement that complies with the statutes,
3 7 rules, and regulations of the federal trade commission.
3 8 d. The provision of local exchange carrier telephone
3 9 service pursuant to a certificate issued under section 476.29.
3 10 e. An affirmative act that violates this chapter but is
3 11 specifically required by, and is in strict conformance with,
3 12 other applicable law, to the extent that the actor could not
3 13 reasonably avoid a violation of this chapter.
3 14 2. "Material fact" as used in this chapter does not
3 15 include repairs of damage to or adjustments on or replacements
3 16 of parts with new parts of otherwise new merchandise if the
3 17 repairs, adjustments, or replacements are made to achieve
3 18 compliance with factory specifications and are made before
3 19 sale of the merchandise at retail and the actual cost of any
3 20 labor and parts charged to or performed by a retailer for any
3 21 such repairs, adjustments, and parts does not exceed three
3 22 hundred dollars or ten percent of the actual cost to a
3 23 retailer including freight of the merchandise, whichever is
3 24 less, providing that the seller posts in a conspicuous place
3 25 notice that repairs, adjustments, or replacements will be
3 26 disclosed upon request. The exclusion provided in this
3 27 subsection does not apply to the concealment, suppression, or
3 28 omission of a material fact if the purchaser requests
3 29 disclosure of any repair, adjustment, or replacement.
3 30 Sec. 5. NEW SECTION. 714H.5 PRIVATE CAUSE OF ACTION.
3 31 1. A consumer who suffers damage or injury as the result
3 32 of a prohibited practice or act in violation of this chapter
3 33 may bring an action at law to recover actual damages. The
3 34 court may order such equitable relief as it deems necessary to
3 35 protect the public from further violations, including
4 1 temporary and permanent injunctive relief.
4 2 2. If the court finds that a person has violated this
4 3 chapter, the court shall award to the consumer the costs of
4 4 the action and to the consumer's attorney reasonable fees.
4 5 Reasonable attorney fees shall be determined by the value of
4 6 the time reasonably expended by the attorney including but not
4 7 limited to consideration of the following factors:
4 8 a. The time and labor required.
4 9 b. The novelty and difficulty of the issues in the case.
4 10 c. The skills required to perform the legal services
4 11 properly.
4 12 d. The preclusion of other employment by the attorney due
4 13 to the attorney's acceptance of the case.
4 14 e. The customary fee.
4 15 f. Whether the fee is fixed or contingent.
4 16 g. The time limitations imposed by the client or the
4 17 circumstances of the case.
4 18 h. The amount of money involved in the case and the
4 19 results obtained.
4 20 i. The experience, reputation, and ability of the
4 21 attorney.
4 22 j. The undesirability of the case.
4 23 k. The nature and length of the professional relationship
4 24 between the attorney and the client.
4 25 l. Damage awards in similar cases.
4 26 3. In order to recover damages, a claim under this section
4 27 shall be proved by a preponderance of the evidence.

4 28 4. If the finder of fact finds by a preponderance of
4 29 clear, convincing, and satisfactory evidence that a prohibited
4 30 practice or act in violation of this chapter constitutes
4 31 willful and wanton disregard for the rights or safety of
4 32 another, in addition to an award of actual damages, statutory
4 33 damages up to three times the amount of actual damages may be
4 34 awarded to a prevailing consumer.

4 35 5. An action pursuant to this chapter must be brought
5 1 within five years of the occurrence of the last event giving
5 2 rise to the cause of action under this chapter or within five
5 3 years of the discovery of the violation of this chapter by the
5 4 person bringing the action, whichever is later.

5 5 6. This section shall not affect a consumer's right to
5 6 seek relief under any other theory of law.

5 7 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL
5 8 NOTIFICATION.

5 9 1. A party filing a petition, counterclaim,
5 10 cross-petition, or pleading in intervention alleging a
5 11 violation under this chapter, within seven days following the
5 12 date of filing such pleading, shall provide a copy to the
5 13 attorney general and, within seven days following entry of any
5 14 final judgment in the action, shall provide a copy of the
5 15 judgment to the attorney general. This subsection shall not
5 16 apply to small claims actions, except as provided in
5 17 subsection 2.

5 18 2. A party appealing to district court a small claims
5 19 order or judgment involving an issue raised under this
5 20 chapter, within seven days of providing notice of the appeal,
5 21 shall notify the attorney general in writing and provide a
5 22 copy of the pleading raising the issue and a copy of the small
5 23 claims court order or judgment.

5 24 3. A party appealing an order or judgment involving an
5 25 issue raised under this chapter, within seven days following
5 26 the date such notice of appeal is filed with the court, shall
5 27 notify the attorney general in writing and provide a copy of
5 28 the pleading raising the issue and a copy of the court order
5 29 or judgment being appealed.

5 30 4. Upon timely application to the court in which an action
5 31 involving an issue raised under this chapter is pending, the
5 32 attorney general may intervene as a party at any time or may
5 33 be heard at any time. The attorney general's failure to
5 34 intervene shall not preclude the attorney general from
5 35 bringing a separate enforcement action.

6 1 5. All copies of pleadings, orders, judgments, and notices
6 2 required by this section to be sent to the attorney general
6 3 shall be sent by certified mail unless the attorney general
6 4 has previously been provided such copies of pleadings, orders,
6 5 judgments, or notices in the same action by certified mail, in
6 6 which case subsequent mailings may be made by regular mail.
6 7 Failure to provide the required mailings to the attorney
6 8 general shall not be grounds for dismissal of an action under
6 9 this chapter, but shall be grounds for a subsequent action by
6 10 the attorney general to vacate or modify the judgment.

6 11 EXPLANATION

6 12 This bill creates a private remedy for certain consumer
6 13 fraud Act violations.

6 14 The bill creates a private cause of action for consumer
6 15 fraud violations. The bill provides that a consumer who
6 16 suffers damage or injury as a result of a prohibited practice
6 17 or act declared to violate the bill may bring an action at law
6 18 to recover actual damages, and may seek court protection from
6 19 further violations, including temporary and permanent
6 20 injunctive relief. In addition, a prevailing consumer in such
6 21 an action shall be awarded costs and reasonable attorney fees
6 22 to be determined by the value of time reasonably expended by
6 23 the attorney including but not limited to certain factors as
6 24 specified in the bill. In addition, if the finder of fact
6 25 finds by a preponderance of clear, convincing, and
6 26 satisfactory evidence, that a prohibited practice or act in
6 27 violation of the bill constitutes willful and wanton disregard
6 28 for the rights or safety of another, in addition to an award
6 29 of actual damages, statutory damages up to three times the
6 30 amount of actual damages may be awarded to a prevailing
6 31 consumer.

6 32 The bill defines a prohibited practice or act to include an
6 33 unfair practice, deception, fraud, false pretense, false
6 34 promise, or misrepresentation, or the concealment,
6 35 suppression, or omission of a material fact with the intent
7 1 that others rely on the concealment, suppression, or omission,
7 2 in connection with the advertisement, sale, or lease of
7 3 consumer merchandise, or the solicitation of contributions for

7 4 charitable purposes. For the purposes of the bill, any
7 5 claimant alleging fraud, false promise, false pretense, or
7 6 misrepresentation must prove that the prohibited practice
7 7 related to a material fact or facts. "Merchandise" does not
7 8 include service offered or provided by certain insurance
7 9 companies, attorneys, financial institutions, public
7 10 utilities, hospitals, health care facilities, hospice
7 11 programs, physicians and surgeons, osteopathic physicians and
7 12 surgeons, physical therapists, occupational therapists,
7 13 physician assistants, podiatrists, chiropractors, nurses,
7 14 dieticians, respiratory care practitioners and therapists,
7 15 dentists, optometrists, psychologists, social workers,
7 16 behavioral therapists, pharmacists, veterinarians, insurance
7 17 producers, public accountants, engineers, architects, and
7 18 landscape architects.

7 19 The bill does not apply to certain advertising by a
7 20 retailer for a product unless the retailer participated in the
7 21 preparation of the advertisement or knew or should have known
7 22 that the advertisement was deceptive or misleading, print
7 23 media in which the advertisement appears or electronic media
7 24 which disseminates the advertisement if the print or
7 25 electronic media has no knowledge of the fraudulent intent,
7 26 design, or purpose of the advertiser at the time the
7 27 advertisement is accepted, any advertisement that complies
7 28 with the statutes, rules, and regulations of the federal trade
7 29 commission, the provision of certain local exchange carrier
7 30 telephone services, and an affirmative act that is in
7 31 violation of the bill but that is specifically required by and
7 32 is in strict conformance with other applicable law, to the
7 33 extent the actor could not reasonably avoid a violation of the
7 34 bill.

7 35 The bill authorizes the attorney general to oversee private
8 1 consumer fraud actions, including small claims court actions,
8 2 by requiring a party filing a petition, counterclaim,
8 3 cross-petition, or pleading in intervention alleging a
8 4 violation under the bill to provide a copy of the relevant
8 5 documents, including judgments and notices of appeal, to the
8 6 attorney general. In addition, the attorney general may
8 7 intervene as a party in a private consumer fraud action at any
8 8 time, or may be heard in such an action at any time.

8 9 The bill provides that failure to provide all mailings of
8 10 petitions, orders, judgments, and notices of appeal to the
8 11 attorney general shall not be grounds for dismissal, but shall
8 12 be grounds for a subsequent action by the attorney general to
8 13 vacate or modify the judgment.

8 14 LSB 1307SV 83

8 15 rh/rj/14